

AMENDED IN SENATE APRIL 15, 2008

SENATE BILL

No. 1717

Introduced by Senator Perata

February 22, 2008

An act to amend Section 4658 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1717, as amended, Perata. Workers' compensation: permanent partial disability benefits.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments be computed in accordance with a prescribed formula. *Existing law provides that if, within 60 days of an employee's disability becoming permanent and stationary, the employer does not offer the injured employee regular work, modified work, or alternative work, as specified, for the period of at least 12 months, the employer shall pay the employee an increased amount of permanent disability benefits.*

~~This bill would declare the intent of the Legislature to enact legislation that would adjust the formula for determining the amount of permanent partial disability benefits to ensure that the amount of benefits provided to injured workers is adequate to comply with constitutional mandates requiring that substantial justice be afforded to all injured workers in workers' compensation cases~~ *eliminate those provisions requiring the*

employer to pay an employee an increased amount of permanent disability benefits if the employer does not offer the injured employee regular work, modified work, or alternative within those specified time periods. The bill would also revise the formula for computing those benefits for injuries causing permanent disability, which occur on or after January 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) In enacting Assembly Bill 227 (Chapter 635 of the Statutes*
4 *of 2003), Senate Bill 228 (Chapter 639 of the Statutes of 2003),*
5 *and Senate Bill 899 (Chapter 34 of the Statutes of 2004), it was*
6 *the intent of the Legislature to create a workers' compensation*
7 *system that is fair to all parties involved.*

8 *(b) Ensuring that permanently disabled workers receive fair*
9 *compensation is a high priority of the Legislature.*

10 *(c) Until we know the full effect workers' compensation reform*
11 *has had on the workers' compensation system in general, and*
12 *permanently disabled workers in particular, we should ensure that*
13 *permanently disabled workers receive adequate benefits.*

14 *(d) In ensuring adequate benefit levels to permanently disabled*
15 *workers, it is not the intent of the Legislature to undermine the*
16 *positive effect workers' compensation reform has had on*
17 *California's employers and workers.*

18 *SEC. 2. Section 4658 of the Labor Code is amended to read:*

19 4658. (a) For injuries occurring prior to January 1, 1992, if
20 the injury causes permanent disability, the percentage of disability
21 to total disability shall be determined, and the disability payment
22 computed and allowed, according to paragraph (1). However, in
23 no event shall the disability payment allowed be less than the
24 disability payment computed according to paragraph (2).

25 (1)

1		Column 2—Number of weeks
2		for which two-thirds of
3	Column 1—Range	average weekly earnings
4	of percentage	allowed for each 1 percent
5	of permanent	of permanent disability
6	disability incurred:	within percentage range:
7	Under 10.....	3
8	10–19.75.....	4
9	20–29.75.....	5
10	30–49.75.....	6
11	50–69.75.....	7
12	70–99.75.....	8

13
14 The number of weeks for which payments shall be allowed set
15 forth in column 2 above based upon the percentage of permanent
16 disability set forth in column 1 above shall be cumulative, and the
17 number of benefit weeks shall increase with the severity of the
18 disability. The following schedule is illustrative of the computation
19 of the number of benefit weeks:

20		
21	Column 1—	
22	Percentage	Column 2—
23	of permanent	Cumulative
24	disability	number of
25	incurred:	benefit weeks:
26	5.....	15.00
27	10.....	30.25
28	15.....	50.25
29	20.....	70.50
30	25.....	95.50
31	30.....	120.75
32	35.....	150.75
33	40.....	180.75
34	45.....	210.75
35	50.....	241.00
36	55.....	276.00
37	60.....	311.00
38	65.....	346.00
39	70.....	381.25
40	75.....	421.25

1	80.....	461.25
2	85.....	501.25
3	90.....	541.25
4	95.....	581.25
5	100.....	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(b) This subdivision shall apply to injuries occurring on or after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this

subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	4
10–19.75.....	5
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after the effective date of the revised permanent disability schedule adopted by the administrative director pursuant to Section 4660. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75.....	3
10–14.75.....	4

1	15–24.75.....	5
2	25–29.75.....	6
3	30–49.75.....	7
4	50–69.75.....	8
5	70–99.75.....	16

6
7 The numbers set forth in column 2 above are based upon the
8 percentage of permanent disability set forth in column 1 above
9 and shall be cumulative, and shall increase with the severity of the
10 disability in the manner illustrated in subdivision (a).

11 ~~(2) If, within 60 days of a disability becoming permanent and~~
12 ~~stationary, an employer does not offer the injured employee regular~~
13 ~~work, modified work, or alternative work, in the form and manner~~
14 ~~prescribed by the administrative director, for a period of at least~~
15 ~~12 months, each disability payment remaining to be paid to the~~
16 ~~injured employee from the date of the end of the 60-day period~~
17 ~~shall be paid in accordance with paragraph (1) and increased by~~
18 ~~15 percent. This paragraph shall not apply to an employer that~~
19 ~~employs fewer than 50 employees.~~

20 ~~(3) (A) If, within 60 days of a disability becoming permanent~~
21 ~~and stationary, an employer offers the injured employee regular~~
22 ~~work, modified work, or alternative work, in the form and manner~~
23 ~~prescribed by the administrative director, for a period of at least~~
24 ~~12 months, and regardless of whether the injured employee accepts~~
25 ~~or rejects the offer, each disability payment remaining to be paid~~
26 ~~to the injured employee from the date the offer was made shall be~~
27 ~~paid in accordance with paragraph (1) and decreased by 15 percent.~~

28 ~~(B) If the regular work, modified work, or alternative work is~~
29 ~~terminated by the employer before the end of the period for which~~
30 ~~disability payments are due the injured employee, the amount of~~
31 ~~each of the remaining disability payments shall be paid in~~
32 ~~accordance with paragraph (1) and increased by 15 percent. An~~
33 ~~employee who voluntarily terminates employment shall not be~~
34 ~~eligible for payment under this subparagraph. This paragraph shall~~
35 ~~not apply to an employer that employs fewer than 50 employees.~~

36 ~~(4)~~

37 (2) For compensable claims arising before April 30, 2004, the
38 schedule provided in this subdivision shall not apply to the
39 determination of permanent disabilities when there has been either
40 a comprehensive medical-legal report or a report by a treating

physician, indicating the existence of permanent disability, or when the employer is required to provide the notice required by Section 4061 to the injured worker.

(3) *The changes made to this subdivision by this act shall apply to injuries occurring on or after January 1, 2009.*

(e) *This subdivision shall apply to injuries occurring on or after January 1, 2009. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:*

<i>Column 1—Range of percentage of permanent disability incurred:</i>	<i>Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:</i>
0–9.75.....	4
10–14.75.....	5
15–24.75.....	7
25–29.75.....	8
30–49.75.....	9
50–69.75.....	11
70–99.75.....	21

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(f) *This subdivision shall apply to injuries occurring on or after January 1, 2010. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:*

<i>Column 1—Range of percentage of permanent disability incurred:</i>	<i>Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:</i>
0–9.75.....	5

1	10–14.75.....	7
2	15–24.75.....	8
3	25–29.75.....	10
4	30–49.75.....	12
5	50–69.75.....	13
6	70–99.75.....	27

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(g) This subdivision shall apply to injuries occurring on or after January 1, 2011. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:		Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0–9.75.....		6
10–14.75.....		8
15–24.75.....		10
25–29.75.....		12
30–49.75.....		14
50–69.75.....		16
70–99.75.....		32

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) Permanent partial disability benefits provided to injured workers pursuant to the state's workers' compensation system set forth in Division 4 (commencing with Section 3200) of the Labor~~

1 ~~Code arbitrarily were severely reduced by administrative actions~~
2 ~~taken in 2005.~~

3 ~~(b) Under current regulations, permanent partial disability~~
4 ~~benefits awarded to injured workers under the workers'~~
5 ~~compensation system are, on average, 50 percent less than of the~~
6 ~~benefits provided prior to 2005.~~

7 ~~(c) The Division of Workers' Compensation in the State~~
8 ~~Department of Industrial Relations has failed to correct the~~
9 ~~regulations and improve those benefits levels despite the division's~~
10 ~~repeated commitment to do so.~~

11 ~~(d) The California Constitution mandates that the workers'~~
12 ~~compensation system provide "substantial justice in all cases."~~

13 ~~(e) Arbitrarily reducing permanent partial disability benefits to~~
14 ~~injured workers in this state by more than 50 percent fails to~~
15 ~~adequately compensate injured workers as required by state law,~~
16 ~~and provide "substantial justice" in workers' compensation cases,~~
17 ~~as required under Section 4 of Article XIV of the California~~
18 ~~Constitution.~~

19 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~
20 ~~that would adjust the formula for determining the amount of~~
21 ~~permanent partial disability benefits to ensure that the amount of~~
22 ~~benefits provided to injured~~

23 ~~workers is adequate to comply with constitutional mandates~~
24 ~~requiring that substantial justice be afforded to all injured workers~~
25 ~~in workers' compensation cases.~~